Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 10-90
Connect America Fund	)	

REPLY COMMENTS OF FRED WILLIAMSON & ASSOCIATES (FWA)

on the

FURTHER NOTICE OF PROPOSED RULEMAKING (FNPRM)

SUMMARY OF REPLY COMMENTS

The Commission's Universal Service reform has created a situation where "robust" broadband and an all IP network may not be attainable either in price cap or rural ILEC service areas.

This misguided policy can be partially rectified if the Commission takes the following actions:

1. Use the $185 million that was rejected by price cap carriers to increase the Universal Service fund "budget" and provide some sufficiency and certainty in support funding for Rural Incumbent Local Exchange Carriers (Rural ILECs). The funding is absolutely essential if the objectives of the Commission are to be achieved in Rural ILEC areas. The

funding should be used for two purposes. First, the existing High Cost Loop Fund cap should be either eliminated or revised to eliminate the line component and replace it with an inflation adjustment. Second, any remaining funding from the $185 million should be utilized to fund broadband facilities (primarily electronics and transport) that are currently unsupported.

2. Provide sufficient support by increasing the Universal Service Budget, to allow either price cap carriers or others to provide "robust" broadband service to customers in rural areas served by price cap carriers.

At a minimum, these two actions would relieve to some extent the harm that the current Universal Service reform has inflicted on Rural ILECs and their customers and would begin to achieve the provisioning of broadband service for rural consumers in price cap rural service areas.

THE FNPRM PROPOSALS ARE MISDIRECTED

This FNPRM was necessary because the Connect America Phase I (CAF Phase I) support funding of $300 million, only $115 million was accepted by price cap carriers for broadband deployment in the rural areas they serve. As a consequence, the Commission is seeking comments "…on potential modifications to the rules governing Connect America Phase I incremental support to further accelerate the deployment of broadband facilities to consumers who lack access to robust broadband."[1] Apparently, the FNPRM is seeking additional ways to induce price cap carriers to accept the remaining $185 million in support funding that was rejected by them initially.

[1] FNPRM released November 19, 2012 in WC Docket No. 10-90, paragraph 2.

The United States Telecom Association, The Independent Telephone & Telecommunications Alliance and the ABC Coalition (USTA, et al) filed comments stating that:

> " … CAF I Incremental Support was envisioned by the Commission as a means to get funding to those carriers best positioned to deploy broadband infrastructure expeditiously…The Commission's proposed modifications are essential to achieving those purposes and to bringing the clear-cut benefits of increased broadband deployment to rural America. This is particularly true in light of the Commission's recent conclusion that 'broadband is not yet being deployed to all Americans in a reasonable and timely fashion.' Because price cap carriers are in a 'unique position to deploy broadband networks rapidly and efficiently' in their service areas, the Commission concluded that CAF I Incremental Support would enable broadband deployment 'beyond what carriers would otherwise undertake' absent such funding. Thus without increased use of CAF I Incremental Support, it will be difficult, if not impossible, for the Commission to close the rural-urban broadband divide in the near term" [2]

These assertions are incorrect. It is ironic that CAF funding for price cap carriers is necessary to support their build-out of broadband to the rural areas they serve. Price cap regulation was allowed by the Commission and State Commissions in order to allow carriers electing price cap regulation the ability to earn a higher return or profit than was allowable under rate-or-return regulation. Part of the additional earnings (above that allowed under rate-of-return) could have been used (or was intended by the Commissions to be used) by price cap carriers to upgrade facilities and to provide broadband services in the rural areas they serve. Instead, the price cap carriers elected to direct funds elsewhere. It is likely that funds were used for other business

[2] The United States Telecom Association, The Independent Telephone & Telecommunications Alliance and the ABC Coalition comments, pages 2 to 4, dated January 28, 2013 in the Matter of Connect America Fund, WC Docket No. 10-90 (footnotes deleted).

needs, including to deploy and improve services in urban areas where the price cap carrier faced competition, to stockholders and or to affiliates to deploy their services. It is clear that little of the price cap carrier earnings went to provide broadband capable facilities in their rural service areas because these are the areas targeted for CAF Phase I support funding.

FWA understands the Commission's objective to provide robust broadband to rural customers served by price cap carriers. However, the National Broadband Plan, through CAF Phase I and II support funding, inappropriately rewards price cap carriers for not using price cap earnings[3] to build broadband facilities to their rural areas, and instead for using these areas as cash cows to support their competitive urban and affiliate operations. Now, because certain price cap carriers did not even accept the gift of CAF Phase I support to build broadband for their rural consumers, this misplaced policy is being further distorted by modifying the CAF Phase I rules to induce these price cap carriers to accept the support.

The FNPRM proposes two alternatives to accomplish this misguided policy:

1. "…combine the remaining funding from the first round of the Connect America Fund into and future rounds of Connect America Phase I funding, and to revise the Phase I rules to expand the definition of eligible areas, adopt a process to update to the National Broadband Map, and alter the metric used to measure build out."[4]
2. "Under the alternative proposal, remaining funds from the first round of Phase I would be added to the budget for Phase II."[5]

The Commission should reject both of these proposals. Both would inappropriately reward price cap carriers for (1) not using price cap earnings to fund build out broadband facilities to their

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[3] The Commission should also require that the price cap carriers use earnings from their non-regulated enterprises to fund their rural broadband deployment, as it has with the rural ILECs that have been forced to file waivers of the Commission's new rules.
[4] Id., paragraph 3.
[5] Id.

rural areas, and then (2) refusing the CAF Phase I support, that when combined with price cap earnings, would allow them to build out broadband facilities to these same rural areas.

The effect of this misguided policy, when taken in context of the overall National Broadband Plan budget constraint, is to take support funds to reward price carriers for not doing their job of deploying broadband to rural areas by penalizing or taking funding from Rural ILECs under rate-of-return regulation who have been successfully deploying broadband facilities to the areas they serve.

THE UNUSED CAF PHASE I FUNDS SHOULD BE USED TO PROVIDE SUFFICIENT FUNDING FOR RURAL ILEC BROADBAND NETWORKS

The National Broadband Plan and the resulting Commission orders, results in insufficient and non-predictable support, at odds with the requirements of Section 254 of the Communications Act. The Plan and Commission Orders:

1. Maintains the flawed nationwide average cost per loop calculation that results in an ever increasing national average cost and loss of support by carriers that are high-cost, but do not meet the increasing average cost threshold.
2. Assumes, wrongly, that continued build-out of fiber to rural customers is inefficient. As a consequence of this incorrect notion, it imposes a regression cap that, based on flawed mechanics and groupings of carriers that at the least is unclear, reduces support for many Rural ILECs.
3. Over time, completely eliminates local switching support.
4. Over time, completely eliminates access payments for carriers that use the Rural ILECs' networks to terminate their customers' services.

5. Imposes an overall cap of $3000/line per-year.

Further, the Commission has indicated that it may (in a Further Notice of Proposed Rulemaking) further reduce Rural ILEC revenues by (a) reducing the authorized rate-or-return from 11.25% to 8% or 9%, (b) eliminating support in areas where there are unsubsidized competitors, and (c) possibly eliminating originating access charges.

The Commission has indicated that if any or all of these rules create problems for Rural ILECs that they may file for a waiver of the rules. However, based on the track record to date, answers to the waivers filed are either insufficient or no action has been taken at all by the Commission on individual filed waivers. Individual company waivers may be able to deal with the most egregious revenue shortfalls created by the Commission Universal Service reform, but they cannot solve the intrinsic and systemic support insufficiency and uncertainty for all Rural ILECs created by the National Broadband Plan and Commission Universal Service reform Orders. In the face of Commission objectives to deploy "robust" broadband in rural areas and transition to an all IP network, Rural ILECs collectively, will now, as a result of Universal Service reform, either be unable to, or will face significant difficulties in accomplishing these objectives. This is unfortunate because prior to Universal Service reform, <u>Rural ILECs were the only carriers</u> that were systematically deploying broadband capable networks in their rural service areas. As discussed above, in lieu of direct support funding, price cap carriers had the benefit of price cap earnings, but did not use these funds to build out their rural service areas. Universal Service reform has now created a situation in which:

1. The collective ability of Rural ILECs to continue deploying broadband capable networks has been compromised. Rural ILECs either have insufficient funding or do not know from year-to-year (as a result of the regression caps) what the level of funding will be.

2. The transition to an all IP network in Rural ILEC areas (which was well underway before reform), is in jeopardy because (a) sufficient funding through normal or accelerated depreciation to recover the costs of older technology likely will not be available and (b) funding for new technologies is insufficient.

3. At odds with the rhetoric about Rural ILECs, most operate efficiently with minimal staff and expense, as evidenced by the minimal findings in the Universal Service Administrative Company (USAC) audits. As a result of Universal Service reform, Rural ILECs may be forced to eliminate critical employees, further degrading their ability to serve customers and provide universal voice and broadband service in their rural areas.

4. Rural ILECs may be unable to raise capital due to uncertainty surrounding predictable revenue levels. Even if Rural ILECs desired to and were financially capable of continuing rural broadband deployment, they may be having difficulty raising capital to continue that deployment.

5. Other Rural ILECs are uncertain if predictable and sufficient funding will be available to continue paying loans for capital already deployed for rural voice and broadband capable networks.

The Commission's Universal Service reform has now created a situation where "robust" broadband and an all IP network may not be attainable either in price cap or Rural ILEC service areas.

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1. Use the $185 million that was rejected by price cap carriers to increase the Universal Service fund "budget" and provide some sufficiency and certainty in support funding for Rural ILECs. The funding is absolutely essential if the objectives of the Commission are to

be achieved in Rural ILEC areas. The funding should be used for two purposes. First, the existing High Cost Loop Fund cap should be either eliminated or revised to eliminate the line component and replace it with an inflation adjustment. Second, any remaining funding from the $185 million should be utilized to fund broadband facilities (primarily electronics and transport) that are currently unsupported.[6]

2. Provide sufficient support by increasing the Universal Service Budget, to allow either price cap carriers or others to provide "robust" broadband service to customers in rural areas served by price cap carriers.

At a minimum, these two actions would relieve to some extent the harm that the current Universal Service reform has inflicted on Rural ILECs and their customers and would begin to achieve the provisioning of broadband service for rural consumers in price cap rural service areas.

Respectfully submitted,

FWA, Inc
8282 S. Memorial Dr. #301
Tulsa, OK 74133
918.298.1618

[6] See Small Company Coalition/Alexicon Telecommunications Consulting FCC Ex Parte Filing of September 18, 2012 in WC Docket No 10-90. That Ex Parte proposed Universal Service funding for broadband electronics and transport included in Separations categories: Category 4.11 Wideband Exchange Line Circuit Equipment allocated to the Interstate jurisdiction as defined in 47 CFR § 36.126 (b) (1) (i); Category 4.22 Interexchange Circuit Equipment Used for Wideband Services including Satellite and Earth Station Equipment used for Wideband Service allocated to the Interstate jurisdiction as defined in 47 CFR § 36.126 (b) (2) (ii); Category 2 Wideband and Exchange Trunk Cable and Wire Facilities allocated to the Interstate jurisdiction as defined in 47 CFR § 36.152(a)(2) and 47 CFR § 36.155.
FWA supports Universal Service funding for the network costs included in these categories